

V.M.S. asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Eblen's denial of Ms. S. claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Ms. S. was injured in two accidents while working for Delta Airlines during 1987. She has previously received medical and disability benefits for these injuries. On April 26, 2001, Ms. S. filed an application with the Commission's Adjudication Division to compel Delta to pay additional medical and disability benefits. In particular, Ms. S. sought payment of additional medical care allegedly necessary to treat her work-related injuries.

Judge Eblen held a hearing on Ms. S.'s claim on June 10, 2002, and then referred the medical aspects of the claim to a medical panel. On April 9, 2004, Judge Eblen adopted the medical panel's opinion and, on that basis, denied Ms. S.'s claim for additional benefits.

In her motion for review, Ms. S. alleges Judge Eblen applied more stringent evidentiary rules to Ms. S. than to Delta. Ms. S. also states she was not provided a copy of the medical records submitted by Delta to the medical panel and, therefore, does not know whether the records were complete. Finally, Ms. S. contends the medical panel did not understand the significance and complexity of her work-related injuries and subsequent treatment.

FINDINGS OF FACT

The Appeals Board adopts Judge Eblen's findings of fact.

DISCUSSION AND CONCLUSIONS OF LAW

Ms. S. raises several challenges to the medical evidence which is the basis for Judge Eblen's decision. Ms. S.'s arguments are addressed below.

Different standards for submitting medical records. Ms. S. argues that, because Delta was allowed additional time to prepare and submit the joint medical record in this case, it was unfair to deny Ms. S. additional time to submit her own additional medical evidence. This argument misunderstands the nature and purpose of the joint medical record.

Under Commission rules, it was Delta's obligation to obtain all Ms. S.'s relevant medical records and then compile those records into an indexed and paginated medical exhibit. This task is for the benefit of both the claimant and the employer/insurer, but the task is assigned to the employer/insurer because they have the staff and other resources necessary to accomplish the task.

In most cases it would be impossible for the ALJ to resolve the case without the joint medical record. These facts explain why Judge Eblen allowed Delta additional time to complete the medical record. On the other hand, if a party desires to submit new medical evidence into the record, it is that party's responsibility to obtain the evidence prior to the evidentiary hearing. This requirement allows opposing parties to respond to the evidence in an orderly fashion.

It appears to the Appeals Board that Judge Eblen's actions in this case were consistent with the foregoing principles.

Delta's failure to provide Ms. S. with a copy of medical record. Ms. S. states that, because Delta did not provide her with a copy of the medical record exhibit in this matter, she is uncertain whether the record is accurate and complete. The Appeals Board agrees that Delta should have provided Ms. S. with a copy of the medical record, but Ms. S. could have requested her copy from Delta or reviewed the medical record on file with Judge Eblen. At this point in this proceeding, Ms. S. must demonstrate a material omission from the medical record. Her suggestion that the record "may" be incomplete is not a sufficient reason to disturb Judge Eblen's decision.

Accuracy of medical panel opinion. Finally, Ms. S. contends that the medical panel did not appreciate the significance and complexity of her work-related injuries and subsequent treatment. To support that contention, she has submitted a letter from her treating physician, Dr. Calodny. However, the Appeals Board notes that the medical panel consisted of impartial experts in neurology and orthopedic surgery. The panel members had access to Ms. S.'s entire medical history as well as the opportunity to personally examine Ms. S.. The panel's report is impartial, thorough and well-reasoned. Having given due consideration to Dr. Calodny's opinion, the Appeals Board nevertheless accepts the medical panel's conclusion that Ms. S.'s additional medical care is not necessary to treat the injuries she suffered in 1987 while working for Delta.

ORDER

The Appeals Board denies Ms. S.'s motion for review and affirms Judge Eblen's decision. It is so ordered.

Dated this 3rd day of February, 2005 .

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch